

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Janine Zajac	Team: Team # 1	CCRB Case #: 201014092	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 09/15/2010 10:54 PM	Location of Incident: § 87(2)(b)	Precinct: 06	18 Mo. SOL 3/15/2012	EO SOL 3/15/2012	
Date/Time CV Reported Fri, 10/08/2010 4:46 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 10/13/2010 11:45 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Juan Perez	11514	942340	006 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Christopher Nunziato	09883	946066	006 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Juan Perez	Abuse: PO Juan Perez stopped § 87(2)(b)	§ 87(2)(b)
B.POM Juan Perez	Discourtesy: PO Juan Perez spoke obscenely and/or rudely to § 87(2)(b)	§ 87(2)(b)
C.POM Juan Perez	Abuse: PO Juan Perez searched § 87(2)(b)'s property.	§ 87(2)(b)
D.POM Juan Perez	Force: PO Juan Perez used pepper spray against § 87(2)(b)	§ 87(2)(b)

Case Summary

At approximately 4:46 PM on October 11, 2010, § 87(2)(b) filed a complaint over the phone with IAB (encl. 7a). His complaint was received at the CCRB on October 13, 2010 (encl. 8a-b).

At approximately 10:54 PM on September 15, 2010, § 87(2)(b) was stopped in front of § 87(2)(b) in Manhattan by PO Juan Perez and PO Christopher Nunziato of the 6th Precinct and the following allegations resulted from their interaction.

- **Allegation A – Abuse of Authority:** PO Juan Perez stopped § 87(2)(b) § 87(2)(g)
§ 87(2)(b)
- **Allegation B – Discourtesy:** PO Juan Perez spoke obscenely and/or rudely to § 87(2)(b)
§ 87(2)(b)
- **Allegation C – Abuse of Authority:** PO Juan Perez searched § 87(2)(b) s
property.
- **Allegation D – Force:** PO Juan Perez used pepper spray against § 87(2)(b) § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b)
§ 87(2)(b).

Statements Made to Medical Personnel

The chief complaint listed on the Pre-Hospital Care Report (encl. 6c) is, “My chest hurts.” In this history of present illness section it says that § 87(2)(b) s chief complaint was chest pain and that he stated he was hit in the left chest. He described feeling left chest pain at a level of 8 out of 10, shortness of breath, and lightheadedness, as well as eye and facial burning. The history of present illness section on the department of medicine admission history and physical examination form (encl. 6d) says that § 87(2)(b) was struck on his defibrillator. The history of present illness section on the internal medicine inpatient discharge resume says that “during the fight he was thrown against something, directly on the AICD,” (encl. 6e).

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on November 5, 2010 (encl. 10a-e). He provided a phone statement on October 21, 2010 (encl. 9a). § 87(2)(g)

On September 15, 2010 at approximately 10:54 PM, he walked from § 87(2)(b) in Manhattan, to where his car was parked on § 87(2)(b). He was wearing a yellow and blue plaid long-sleeved shirt, glasses, his dog tags from the Army, a brown pin-striped hat, white shoes, and blue jeans. § 87(2)(b) had a white plastic grocery bag with health food inside of it. When he reached the location where his car was parked, it was not there. He did not see any glass on the ground, so he deduced that his car had been towed. It was dark on the block, but there are sporadic street lights.

He sat down on the bottom step on the stoop of a brownstone directly across from where his car was parked and called 311 to find out where his car was. The stoop was approximately six to eight feet from the street. He could not recall the address of the building he was sitting in front of. A few seconds after he sat down as he was speaking to a 311 operator, a marked RMP pulled up and stopped in front of him. The passenger of the car, identified through investigation as PO Juan Perez of the 6th Precinct, was a white male in his 40s, 5'10", 180-200 lbs, with unknown hair color and dressed in uniform. The driver of the car, identified through investigation as PO Christopher Nunziato, also of the 6th Precinct, was a Hispanic male in his late 20s or early 30s, 180-200 lbs, with 5'10", with dark hair and dressed in uniform. The passenger side of the car was closest to § 87(2)(b). PO Perez did not exit that car and asked § 87(2)(b) if he lived in that building. § 87(2)(b) said, "No," and then continued his phone conversation. He did not pay attention to exactly what the officers did because he was focusing on the instructions that the 311 operator was giving to him about how to get his car back.

He then realized that PO Perez and PO Nunziato were standing in front of him. They were saying something but he did not know exactly what they were saying. § 87(2)(b) hung up his phone and stood up. PO Perez said, "Now we have your fucking attention." PO Nunziato took the grocery bag of food from him, looked inside of it, reached into it but did not take anything out, and then set it down on the ground. Neither of the officers asked him any further questions. § 87(2)(b) asked what was going on and why they were checking his bag, and PO Perez told him that he was trespassing. § 87(2)(b) tried to explain that he works in the area. One of the officers, he did not know which one, asked § 87(2)(b) for his ID, and § 87(2)(b) took his wallet out. § 87(2)(b) was trying to be as polite as possible with the officers so as to not rile them up further.

Before he was able to hand his ID to the officers, a man and a woman came out of the brownstone in front of which § 87(2)(b) had been sitting. The officers shifted their attention to this man and woman, and they asked if § 87(2)(b) lived in the building. They confirmed that he did not. PO Nunziato immediately grabbed § 87(2)(b)'s left wrist. § 87(2)(b) suffers from gout and therefore his knees are weak and he cannot balance properly. § 87(2)(b) lost his balance when PO Nunziato grabbed his wrist and he fell backward onto the steps. § 87(2)(b) did not raise his voice or use profanity with the officers at any point. He did not purposefully pull away from PO Nunziato and did not resist against either officer during the incident.

§ 87(2)(b) was not able to stand up because of his knees. PO Nunziato got on top of § 87(2)(b) and held one of his arms. § 87(2)(b) did not know exactly what PO Nunziato was attempting to do, but was pulling on him. The female witness yelled at the officers that § 87(2)(b) was showing his ID. § 87(2)(b) told the officers to be careful because of his defibrillator, but PO Nunziato put more pressure on him. PO Perez climbed up the steps so he was behind § 87(2)(b) reached his hand around to § 87(2)(b)'s face and pepper-sprayed him twice in a row. Both officers then took him down to the ground on the cement. § 87(2)(b) did not resist against the officers but attempted to put his right arm in front of his upper left chest to protect the area where the defibrillator is located inside of his chest. The officers handcuffed him while he was face-down on the ground. While he was on the ground he began to ask for an ambulance because he could feel that he could not properly breathe. The officers both picked him up and pushed him face first against a gate that was directly to the right of the steps. One of the spikes of the gate hit § 87(2)(b) in the chest where his defibrillator is, which is in his left chest.

§ 87(2)(b) then told the various people who had gathered to call for an ambulance and to call § 87(2)(b). He was placed in the back of the RMP with his legs sticking out. Two people from § 87(2)(b) came soon and told the officers that § 87(2)(b) has heart problems and that he needed an ambulance. An ambulance came quickly, and at the same time that § 87(2)(b) noticed the ambulance he noticed a black male sergeant, identified through investigation as Sgt. Darrell Anderson, but he did not interact with him. He did not know when Sgt. Anderson arrived, but

only noticed him when EMS came. He was taken to § 87(2)(b), where he stayed until September 8, 2010. PO Perez and PO Nunziato arrived at the hospital shortly after he was admitted. While he was lying in his hospital bed, he heard them discussing the incident and saying that they had not believed him about his heart problems when he was first talking about them. He was pretending to be asleep and also heard them say that he “didn’t know who he was messing with.” He was given morphine and medication for his heart at the hospital.

§ 87(2)(b) was taken to the 6th Precinct stationhouse after he was released from the hospital on September 18, 2010. He knew the desk sergeant who was on duty at the time, and he was taken to court approximately forty-five minutes later. He provided the name and telephone number of a witness named § 87(2)(b) who was later identified through investigation as § 87(2)(b). § 87(2)(b) sent an email to the investigation on November 12, 2010 which included contact information for two additional witnesses, § 87(2)(b) and § 87(2)(b) who had given their information to § 87(2)(b)’s coworkers who came to the scene. § 87(2)(b) does not have any kind of relationship with the witnesses whose contact information he provided.

Witness: § 87(2)(b)

- § 87(2)(b)

§ 87(2)(b) provided the following phone statement on December 6, 2010 (encl. 12a). § 87(2)(g)

On the date of the incident, § 87(2)(b) was coming around the corner of § 87(2)(b). He had been visiting his cousin who works at a deli in the neighborhood. A man who § 87(2)(b) did not know, who is known by the investigation to be § 87(2)(b) was sitting on a stoop across the street from § 87(2)(b). Once § 87(2)(b) saw the officers approach § 87(2)(b) he wanted to see what was going on so he stopped walking and stood approximately 15-25 feet away and watched. He was across the street. Two white male officers got out of the car, but § 87(2)(b) could not describe them further.

The officers were speaking to § 87(2)(b) but § 87(2)(b) could not hear what they said at first. A woman was standing in the doorway of the building in front of which § 87(2)(b) was sitting and said, "No, it's OK," to the officers, but § 87(2)(b) did not know what this was in response to. He heard the officers tell the man, who was sitting on the steps of a building, to get up. The man responded that he was just sitting there and that he did not do anything wrong. He told the officers to check his ID and that his car had been stolen, and that he had called the police himself because of his stolen car. The woman in the doorway said, "He has ID, check his ID!" § 87(2)(b) did not believe that the officers ever looked at § 87(2)(b)’s ID. § 87(2)(b) could not hear anything else she said. One of the officers grabbed one of § 87(2)(b)’s upper arm, but § 87(2)(b) did not get up and remained seated. § 87(2)(b) is a big man, so the officer was not able to pick him up. § 87(2)(b) said, "I didn't do anything wrong, I'm not getting up," and he offered his ID to the officers again. § 87(2)(b)’s hands were down at his side and though he was not getting up, he was calm. The second officer grabbed him at this point and the officers instructed him again to get up. Again, § 87(2)(b) did not move. One of the officers then pepper sprayed him. § 87(2)(b) got upset after being pepper sprayed. Both officers handcuffed him after he was pepper sprayed. § 87(2)(b) was down on the steps when they handcuffed him. The officers were able to stand him up at this point and moved him near a gate by the steps he had been sitting on.

The officers did not do anything else after they stood § 87(2)(b) up. While § 87(2)(b) was standing up he screamed that he has a heart problem and asked for an ambulance. § 87(2)(b) was not placed on the ground at any point. § 87(2)(b) began to explain that he worked somewhere in the neighborhood. § 87(2)(b) said, "I work down the block, call § 87(2)(b) or something to

that effect. § 87(2)(b) stayed across the street until some of § 87(2)(b)'s coworkers came to the scene, at which point he approached them and explained that he had witnessed the incident and gave them his name and contact information. He heard them say that they worked with § 87(2)(b). He gave his contact information because he felt the officer's behavior was wrong from the start of the incident. An ambulance arrived a couple of minutes after § 87(2)(b) asked for one. § 87(2)(b) left when the ambulance came.

Witness: § 87(2)(b)

- § 87(2)(b)

§ 87(2)(b) provided the following phone statement on November 15, 2010 (encl. 11a).

§ 87(2)(g)
§ 87(2)(b) was at § 87(2)(b) visiting her son who lives in the building. § 87(2)(b) had come down the stairs and had just reached the front door when she saw a police car pull up and stop right in front of the building. The officers got out of the car right away and approached a large black man, identified through investigation as § 87(2)(b) who was sitting on the stoop. Because the officers were there, she decided to stay inside of the door and wait for her friend. It is a glass door and she was able to hear everything that was happening outside through the door. She believed that they just asked him for his ID when they first approached. She did not hear either of the officers use profanity. She does not know § 87(2)(b) and did not know what had happened before the officers approached or what he had been doing.

The interaction escalated quickly from a conversation to a physical altercation. The officers were pulling him. She opened the door but she did not go outside because she did not want to pass by them while they were interacting with § 87(2)(b). § 87(2)(b) was asking the officers why they were harassing him and why they wanted to see his ID. § 87(2)(b) did not fight back physically but was saying things like "This is wrong." It seemed that the more he spoke the more physically forceful the officers got. The officers then jumped on him and tried to take him to the ground. § 87(2)(b) was unable to specify what she meant by "jumped on" when asked, but said that the officers "roughed him up" and pulled his hands behind his back. The officers did not hit him but pushed him to the ground against the steps to the building in a way that she described as "uncomfortable." His belongings were falling all over the place. Then they put him in the police car. She overheard the man saying that his car had been towed and he was sitting on the stoop while he tried to figure out that situation.

She overheard § 87(2)(b) saying that he was a manager at § 87(2)(b) and she told him that she would take her card to the bar because she lives in the neighborhood and had seen everything. He asked her to tell his friends at § 87(2)(b) to come to the stationhouse to help him. She was shocked that the incident had escalated so quickly, which was why she wanted to give her contact information to the § 87(2)(b) employees.

Witness: § 87(2)(b)

- § 87(2)(b)

§ 87(2)(b) provided the following phone statement on January 4, 2011 (encl. 13a). On the date of the incident he was in the laundry room in the basement of his building. § 87(2)(b) He was finishing his laundry when he heard some yelling happening outside, but could not hear anything specific. The door to the basement was open, which was how he could hear what was happening outside. He went upstairs and heard an individual he does not know, known by the investigation to be § 87(2)(b) say, "Don't put your hands on me, I'm not doing anything." He heard this through the glass front door as he passed by. One of his

neighbors, whose name he does not know, said that someone was fighting with the police outside. § 87(2)(b) continued in to his apartment, which is located on the first floor and has a window that faces out onto § 87(2)(b), and this window was already open. § 87(2)(b) went up to his window to listen. One of the officers asked § 87(2)(b) "Do you live in the building?" He responded, "What, do I have to live here to sit on the stoop," and said something about his car being towed. § 87(2)(b)'s voice was raised slightly. § 87(2)(b) gathered from the bits of the conversation he was able to overhear that the officers had initially harassed § 87(2)(b) because he had been sitting on the stoop. § 87(2)(b) was sitting on the stoop of § 87(2)(b), which is next door to § 87(2)(b)'s building. § 87(2)(b) gathered that the officers had § 87(2)(b) empty his pockets because there were items on the stoop and a woman who lives at § 87(2)(b) was outside and later said to the officers, "Don't forget, his wallet is there" and pointed to the things on the stoop.

§ 87(2)(b) went to his window and saw that § 87(2)(b) was not in the police car yet. The first physical contact that § 87(2)(b) witnessed was the officers trying to get him into the car, which was parked right in front of § 87(2)(b). § 87(2)(b) was already in handcuffs, and § 87(2)(b) did not see how or when § 87(2)(b) was handcuffed. § 87(2)(b) started yelling that his name was § 87(2)(b) and that he's the § 87(2)(b) and that he is not a criminal. He told the officers to call § 87(2)(b) to verify who he is. § 87(2)(b) is familiar with this bar, so he found the number for § 87(2)(b) and called them and informed an employee that § 87(2)(b) was getting arrested.

§ 87(2)(b) yelled to the officers from inside his apartment that he had called § 87(2)(b) and that someone had confirmed that § 87(2)(b) worked there. The officers looked at him but did not say anything to him. § 87(2)(b) saw from his window when two men from § 87(2)(b) arrived and watched their interaction with the officers. The men told the officers that § 87(2)(b) has a heart problem and the stress could kill him, but the officers did not listen to them. § 87(2)(b) went outside to talk to the men once he saw that they were not getting anywhere with the officers.

The officers then tried to put § 87(2)(b) in the back of their car, but he began to yell and he started crying. The officers were not able to push him into the car, so one of them went around the opposite side of the car and pulled him in from the other side while the other officer pushed him in. § 87(2)(b) said he could not breathe and said, "I can't take it in here." He was apologizing and also said, "Someone help me." An ambulance arrived, but the officers would not let the EMTs unhandcuff § 87(2)(b). One of the officers told § 87(2)(b) to leave, but he said that he lived in the building. A black sergeant arrived on the scene, and § 87(2)(b) gave his name and contact information to the sergeant. There were tenants of § 87(2)(b) outside, but § 87(2)(b) did not know them. A photographer arrived and took pictures, but § 87(2)(b) did not know who this photographer was. § 87(2)(b) went back inside after § 87(2)(b) was put in the ambulance and he did not see anything else. One of the officers said something about burglaries in the building, but when § 87(2)(b) later asked the superintendent about burglaries he said there were none.

NYPD Statements:

Subject Officer: PO JUAN PEREZ

- § 87(2)(b)-year-old Hispanic male, 5'8", 204 lbs, with § 87(2)(b) hair and § 87(2)(b) eyes
- On the date of the incident he worked from 10:00 PM until 4:35 PM with PO Nunziato. He worked a foot post for the first portion of his tour but then did sector patrol in a marked RMP. He was dressed in uniform

Memo Book

PO Perez had the following memo book entries pertaining to this incident (encl. 15a-c). At 10:54 PM he wrote that he had § 87(2)(b) under arrest at § 87(2)(b). At 10:59 PM he wrote that he transported § 87(2)(b) to § 87(2)(b). At 11:50 PM he wrote that § 87(2)(b)'s property was returned.

UF-61 Complaint Report

The UF-61 complaint report (encl. 14a-b) says that PO Perez observed § 87(2)(b) sitting on the front stairs/stoop on private property at § 87(2)(b), which is the site of a previous robbery. PO Perez questioned § 87(2)(b) as a common law inquiry for proper identification to determine if § 87(2)(b) lived in the building. § 87(2)(b) then became loud and belligerent, used improper language and gestures, and invaded PO Perez's space, which caused PO Perez to fear for his safety. PO Perez then affected a lawful arrest but § 87(2)(b) resisted. In order to affect the arrest a chemical agent was discharged and § 87(2)(b) was removed to the hospital.

Criminal Court Complaint

In the criminal court complaint (encl. 16a-b), PO Perez informed the court that § 87(2)(b) was observed sitting on the front stairs of § 87(2)(b) and that § 87(2)(b) was asked several times if he lives in the building but § 87(2)(b) did not reply. PO Perez also observed § 87(2)(b) yelling and screaming, which caused people to express alarm and a crowd to gather. The criminal court complaint further states that § 87(2)(b) did not have permission to be on the premises and that he flailed his arms, twisted his body, and pushed away from PO Perez during the handcuffing process.

CCRB Testimony

PO Perez was interviewed at the CCRB on March 4, 2011 (encl. 17a-c). On the date of the incident, PO Perez saw a male, § 87(2)(b) sitting on the stoop outside of § 87(2)(b) in Manhattan. PO Perez was the first to observe § 87(2)(b). PO Perez told PO Nunziato what he was seeing but they did not discuss how they were going to handle the situation. People sitting on the stoops of private property is a condition in the 6th Precinct because they often receive complaints about this issue. PO Perez was in the passenger seat of their car, which was closest to § 87(2)(b). PO Perez was unable to estimate how far the stoop was from the officers' car. From inside of the car, PO Perez asked § 87(2)(b) if he lived in the building, but § 87(2)(b) did not respond. He was talking on his cell phone.

PO Perez and PO Nunziato got out of the car at the same time and approached § 87(2)(b). PO Perez and PO Nunziato alternated speaking to § 87(2)(b). Both officers tried to speak to him and asked for his ID, but § 87(2)(b) continued to ignore them. PO Perez did not know what § 87(2)(b) was saying on the phone. § 87(2)(b) had a grocery bag next to him that had chips, peanuts, and soda inside of it. There was an additional grocery bag hanging on a nearby fence. PO Perez asked § 87(2)(b) again for ID, and § 87(2)(b) did not respond. PO Perez estimated that he asked § 87(2)(b) for his ID and to move off of the stoop five times while § 87(2)(b) ignored him. PO Perez then picked up the grocery bag that was sitting next to § 87(2)(b) looked inside of it, and moved it off of the stoop because § 87(2)(b) and his belongings did not belong there. PO Perez did not say, "Now we have your fucking attention," and did not hear PO Nunziato say this, either. § 87(2)(b) became very angry when PO Perez moved the bag and § 87(2)(b) began to scream. He yelled, "Are you crazy? What the fuck is your problem? I'm not doing anything. I fucking work here." PO Perez asked § 87(2)(b) if he was the building super. § 87(2)(b) began to get up and said, "You're a fucking racist; you're bothering me because I'm black. Fuck you." § 87(2)(b) was also flailing his arms. PO Perez asked for his ID and told § 87(2)(b) that he just

wanted to know if he worked in the building and that if he did, PO Perez was going to fill out information about why § 87(2)(b) had been stopped. § 87(2)(b) said, “Fuck you, I’m not giving you anything.” PO Perez said that § 87(2)(b) began to push his weight against the officers, which he demonstrated as pulling his arms away and moving toward the officers. § 87(2)(b) was considered under arrest at this point.

At this point, neighbors began to open their windows and a crowd began to gather. PO Perez could not recall how many people began to gather. PO Nunziato was simultaneously talking to § 87(2)(b) and asking for his ID while explaining that they just wanted to determine if he belonged at that building. Because people were gathering, the officers began to apprehend him. PO Perez made physical contact with § 87(2)(b) first by grabbing one of his arms. PO Nunziato then began to assist by grabbing § 87(2)(b)’s other arm. PO Perez was unable to estimate how long the physical struggle, which occurred on the steps, lasted.

PO Perez then used his pepper spray because § 87(2)(b) was not compliant while the officers tried to handcuff him. PO Perez was unable to estimate how long he struggled with § 87(2)(b) before he decided to use his pepper spray. PO Perez did not give § 87(2)(b) any warnings that he was going to use his pepper spray. PO Perez used the pepper spray because he was worried that § 87(2)(b) would hurt PO Nunziato or PO Perez, and PO Perez did not want to hit § 87(2)(b). PO Perez determined that pepper spray was the best option because it was the least amount of force he could use to get § 87(2)(b) to comply.

§ 87(2)(b) became compliant once he was pepper sprayed. At some point § 87(2)(b) ended up back down on the steps, and he was handcuffed while he was down. After PO Perez pepper-sprayed § 87(2)(b) he began to yell that his chest hurt. As soon as § 87(2)(b) was in handcuffs, both officers picked him up and put him in back of their police car. They called EMS because § 87(2)(b) was complaining of chest pain. § 87(2)(b) was taken from the scene in an ambulance. § 87(2)(b) was not taken to the ground again and was never put up against a gate. None of the people who had gathered got involved in the incident at any point or spoke to the officers.

Sgt. Anderson came to the scene to verify § 87(2)(b)’s arrest, and EMS arrived approximately thirty seconds after Sgt. Anderson. PO Perez did not recall § 87(2)(b) interacting with Sgt. Anderson. PO Perez could not recall who accompanied § 87(2)(b) in the ambulance, but PO Perez eventually went to the hospital and waited with § 87(2)(b). He was relieved from the hospital by another officer so he could finish the arrest paperwork. PO Perez did not know what § 87(2)(b) was treated for at the hospital.

Witness Officer: PO CHRISTOPHER NUNZIATO

- § 87(2)(b) -four-year-old white male, 5’6”, 190 lbs, with § 87(2)(b) hair and blue eyes
- On the date of the incident he worked from 10:00 PM until 4:35 AM with PO Perez. He was assigned to cabaret auto, he was dressed in uniform, and he was in a marked car.

Memo Book

PO Nunziato had the following entries in his memo book pertaining to this incident (encl. 18a-b). At 10:50 PM he wrote that he had one male stopped at § 87(2)(b). At 10:51 PM he wrote that he had one male under arrest at § 87(2)(b) and that this prisoner was transported to § 87(2)(b).

CCRB Testimony

PO Nunziato was interviewed at the CCRB on April 1, 2011 (encl. 19a-c). § 87(2)(g) PO Nunziato said in his CCRB interview that it was possible that he said, “Now we have your fucking attention,” to § 87(2)(b) but he did not know if he actually said it. PO Nunziato could not recall exactly what

words were exchanged between § 87(2)(b) and the officers, but § 87(2)(b) began to get angry. PO Perez grabbed the plastic grocery bag and moved it to the side, but PO Nunziato did not know if PO Perez looked into the bag. PO Nunziato did not look into the plastic grocery bag at any point.

PO Nunziato could not recall what the charges against § 87(2)(b) were, but assumed they were disorderly conduct and trespassing. Both officers instructed § 87(2)(b) to put his hands behind his back but § 87(2)(b) would not. Before using the pepper spray, PO Perez issued a verbal warning to § 87(2)(b) but PO Nunziato could not recall exactly what PO Perez said. PO Nunziato explained that because § 87(2)(b) was not compliant, they could have used physical force such as hitting him, but they did not want to hurt § 87(2)(b). PO Nunziato could not recall if § 87(2)(b) was put up against a gate during the handcuffing process. Although PO Nunziato recalled that he and PO Perez obtained § 87(2)(b)'s ID at some point, he could not recall if § 87(2)(b) provided it before or after he was in handcuffs. It took approximately two or three minutes to gain control of § 87(2)(b)'s arms.

Right after being pepper sprayed, § 87(2)(b) told the officers that he has a heart condition. PO Nunziato could not recall if the ambulance had arrived by the time that Sgt. Anderson came. PO Nunziato could not remember if Sgt. Anderson interacted with § 87(2)(b). PO Nunziato learned at the end of the incident that § 87(2)(b) manages § 87(2)(b) and that his car had been parked on § 87(2)(b) and he had been trying to figure out where it was. He learned this from another employee of § 87(2)(b) who had come to the scene, but PO Nunziato did not know how this person had been alerted to the situation. This person also told PO Nunziato that § 87(2)(b) has some kind of nervous condition, which may have influenced his behavior and how upset he got. People began to come outside and watch what was going on, but no one got involved further than speaking to the officers. PO Nunziato said that he spoke to a couple of them but he could not recall what exactly any of the bystanders said because he was focused on § 87(2)(b). PO Nunziato remembered one person in particular who was inside of the building watching from his window.

§ 87(2)(b) was then taken to § 87(2)(b) for his heart condition and also because of the pepper spray. PO Nunziato could not recall if he went in the ambulance with § 87(2)(b) but he ended up at § 87(2)(b) at some point. After that, PO Nunziato resumed patrol.

Medical Records

§ 87(2)(b) was seen at § 87(2)(b) in Manhattan while he was in police custody. He was admitted to the in-patient department and his defibrillator was monitored. On the department of medicine admission history and physical examination form, the first listed diagnosis is, "Chest pain, likely musculoskeletal with component of anxiety," (encl. 21o). He was released on September 19, 2010 from the internal medicine department with a diagnosis of non-cardiac musculoskeletal chest pain (encl. 21s).

NYPD Documents

Arrest for Incident and Disposition

- All criminal charges in connection with the incident on September 15, 2010 have been dismissed. (encl. 23a-d)

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of April 15, 2011 with regard to this incident.

Civilian Criminal History

- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]

Civilian CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 5a).

Subject Officers CCRB History

- PO Perez has been a member of the service for four years and there are no substantiated CCRB allegations against him (encl. 4a).

Conclusion

Identification of Subject Officers

§ 87(2)(b) obtained PO Perez's name through his arrest documents, and PO Perez admitted to interacting with § 87(2)(b) on the date of the incident.

Allegations Not Pleaded

§ 87(2)(b) alleged that PO Perez and PO Nunziato pushed him against a gate and took him to the ground in the course of his arrest. As these actions were incident to § 87(2)(b)'s arrest, these force allegations are not being pleaded.

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: PO Juan Perez stopped § 87(2)(b)

It is not disputed that PO Perez asked § 87(2)(b) to state whether he lived at § 87(2)(b) and that following a brief encounter, he stopped § 87(2)(b). PO Perez said that the issue of people sitting on stoops who do not belong there is a condition in the 6th Precinct. According to § 87(2)(b), § 87(2)(b) he first noticed PO Perez and PO Nunziato when they stopped their vehicle in front of where he sat on the stoop of § 87(2)(b) and PO Perez asked § 87(2)(b) if he lived in the building. § 87(2)(b) said that he looked up at PO Perez and said, "No," before returning to his cell phone conversation. PO Perez and PO Nunziato both said that § 87(2)(b) did not respond to PO Perez's initial question and that they got out of their car after § 87(2)(b) ignored PO Perez's question a couple of times.

According to the Street Encounters Legal Issues memo book insert (encl. 1a), an officer must have "an articulable reason to approach" a person during a level 1 request for information. For an officer to be justified in stopped an individual, he must have reasonable suspicion that a crime has been or is about to be committed, as per criminal procedure law 140.50 (encl. 2a). § 87(2)(g)

[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g)

Allegation B – Discourtesy: PO Juan Perez spoke obscenely and/or rudely to § 87(2)(b)

Allegation C – Abuse of Authority: PO Juan Perez searched § 87(2)(b) **s property.**

§ 87(2)(b) alleged that when the officers first got out of their car and approached him, PO Perez said, “Now we have your fucking attention.” Shortly thereafter, PO Perez admittedly picked up the plastic grocery bag that was sitting next to § 87(2)(b) and looked inside of it. PO Perez did not admit to using profanity with § 87(2)(b) and § 87(2)(b) who was standing just inside the doorway of the building when the officers first approached. § 87(2)(b) did not remember either officer using profanity. § 87(2)(b) arrived at a point in the encounter after which the discourtesy occurred. Additionally, § 87(2)(b) alleged that PO Nunziato picked up his grocery bag looked into it, reached into it but did not remove anything, and then put it down. PO Perez, however, admitted to picking up the bag, looking into it, and putting it back down away from § 87(2)(b). PO Nunziato also stated that PO Perez performed this action, but neither officer said that PO Perez reached into the bag. None of the witnesses said anything about § 87(2)(b) having any bags with him. § 87(2)(g)

Allegation D – Force: PO Juan Perez used pepper spray against § 87(2)(b)

It is not disputed that PO Perez used pepper spray against § 87(2)(b). However, the facts regarding § 87(2)(b)'s level of resistance are in dispute. § 87(2)(b) denied actively resisting the officers but said that he lost his balance and fell back on to the stoop once the officers began to grab his arms to handcuff him. He said that he did not intentionally resist the officers but that he was not able to stand up because he suffers from gout, which affects his knees. The officers, conversely, both testified that § 87(2)(b) was not compliant and resisted when they attempted to handcuff him. Witness § 87(2)(b) however, said that one of the officers grabbed one of § 87(2)(b)'s upper arms, but § 87(2)(b) did not get up and because § 87(2)(b) is a big man, the officer was not able to pick him up. § 87(2)(b) then heard § 87(2)(b) say, "I didn't do anything wrong, I'm not getting up," and he offered his ID to the officers again. § 87(2)(b) said that § 87(2)(b) was still calm at this point. § 87(2)(b) said that the second officer grabbed § 87(2)(b) at this point and both officers instructed him again to get up but again, § 87(2)(b) did not move.

§ 87(2)(g)

According to Patrol Guide procedure 212-95 concerning the use of pepper spray (encl. 3a-d), an officer is permitted to use pepper spray when he “reasonably believes it is necessary to effect an arrest of a resisting suspect.” § 87(2)(g)

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]
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[Redacted]

Team: _____

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Investigator:	_____	_____	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date